

GOVERNMENT OF THE DISTRICT OF COLUMBIA



HATCH ACT AND PERSONNEL RULES OVERVIEW

In light of the upcoming political contests in the District of Columbia (including fundraising activities, declarations of candidacies, and preparations for the primary and general elections in 2006), the following memorandum has been prepared to provide an overview of the “do’s and don’t’s” regarding political activities of District government employees.

The Hatch Act is a federal law that applies to District government employees and regulates political activities of employees both on and off the job. The Hatch Act does not apply to the Mayor, members of the Council, or the Recorder of Deeds (“non-covered persons”). The Hatch Act and its implementing rules apply to political elections, national and local, including those in neighboring jurisdictions outside the District of Columbia.

This memorandum is a guide and cannot address all questions that may arise regarding compliance with the Hatch Act. Please refer to the contact information at the end of the memorandum for additional information and assistance.

The Office of the Special Counsel (“OSC”) is the federal agency with exclusive authority to investigate reports or complaints of Hatch Act violations. OSC prosecutes alleged violations before the U.S. Merit Systems Protection Board (“MSPB”). Upon a determination by the MSPB that a District government employee has violated the Hatch Act, the agency may order the employee’s removal or suspension from his or her government job (30-day minimum). Additional guidance about the Hatch Act may be obtained from OSC at (202) 653-6143 (Hatch Act hotline) or the OSC’s informational website at www.osc.gov (follow link for “Hatch Act for federal employees”).

In addition to the Hatch Act restrictions, District government employees are subject to the personnel rules prescribed by the D.C. Office of Personnel, which also apply to political activities.

General prohibitions:

Under no circumstances may D.C. government employees covered by the Hatch Act engage in fundraising activities or their equivalent in support of political activities, whether on or off the job, including the solicitation, receipt, or collection of political campaign funds or volunteer services. Nor may District government employees covered by the Act run for partisan political public office (although they may run for party offices, such as a party’s state or national committee, and for nonpartisan public offices, such as Advisory Neighborhood Commissionerships).

Apart from the foregoing, District government employees covered by the Hatch Act may engage in political activities (whether partisan or nonpartisan) only while off duty, *i.e.*, while outside District government work hours and government buildings, and without use of government facilities or equipment such as computers, cell phones, and handheld text-message devices. An employee is “on duty” when he or she is: (i) in a pay status other than paid leave or other authorized absence; or (ii) representing the government in an official capacity. A senior-level official whose duties require that he or she be “on call” beyond the normal eight-hour work day is deemed for these purposes to be “on

duty” during whatever hours he or she reasonably might be expected to be available to perform his or her official duties.

Employees may not:

- ♦ Use their official authority or influence to interfere with an election;
- ♦ Use their official title when engaging in political activity;
- ♦ Use their official authority to coerce a person to participate in political activity;
- ♦ Engage in political activity while wearing an official uniform;
- ♦ Solicit, accept or receive political contributions;
- ♦ Use any government resource or asset to engage in political activity; or
- ♦ Solicit, accept or receive volunteer campaign services from subordinates for any political purpose.

General permissible activities:

District government employees may—

- ♦ Express opinions about candidates and issues;
- ♦ Contribute money to political organizations;
- ♦ Attend political fundraisers; and
- ♦ Campaign for or against political issues or candidates.

Fundraising:

A District government employee covered by the Hatch Act may assist in organizing a fundraiser, including supplying names for the invitation list, so long as he or she does not personally solicit, accept, or receive contributions. However, an employee's name may not appear on an invitation to such a fundraiser as a sponsor or point of contact. An employee is allowed to give a speech or keynote address at a political fundraiser, as long as he or she is not on duty and does not solicit political contributions in the course of his or her remarks.

An employee covered by the Hatch Act may not host a fundraiser at his or her home. However, a spouse who is not covered under the Hatch Act may host such a fundraiser, and the employee may attend. The covered employee may not personally solicit contributions at the fundraiser. Moreover, the covered employee may not accept or receive political contributions.

Community Meetings:

District government employees covered by the Hatch Act may continue to attend officially scheduled community meetings and other official events to speak in support of the Administration's objectives and accomplishments. However, spokespersons should make clear that they are not seeking to influence the outcome of an election. Hence, for example, in response to a question that challenges a mayoral candidate's position on an issue or endorses the position of an announced candidate for the Council, the District government employee should preface his or her remarks by disclaiming any intention to advise the questioner how to vote, whether for or against any candidate, and should address only official government policies or actions.

Special cautions for senior managers volunteering on a campaign:

High-level officials covered by the Hatch Act may engage in political activities while off duty to the extent described above. However, they should not seek support or participation from businesses,

organizations, or individuals with which their agencies interact in any way. Otherwise, such an official may find himself or herself in violation of the ethical standard that forbids him or her to seek a favor from someone whom his or her agency regulates, with whom the agency does business, or who otherwise is interested in doing business with the District government. Officials also may not use their authority to affect the result of an election. This means that, for example, they may not (i) use their official title while participating in political activity, (ii) use their authority to coerce any person to participate in political activity, or (iii) solicit, accept, or receive uncompensated individual volunteer services from a subordinate for any political purpose.

District government employees covered by the Hatch Act are free to supply a campaign with names of people to contact as part of their campaign activities, but not on the officials' behalf and only so long as such people are to be contacted separately by the campaign. *See also* OSC Hatch Act Advisory: "D.C. Employee Serving as an Officer of a Campaign Committee" at www.osc.gov (follow link for "Hatch Act for federal employees").

Use of E-mail to engage in political activity:

The OSC has issued a special advisory regarding limitations on the use of government-owned electronic messaging devices, such as computers, cell phones, handheld wireless E-mail devices and text messaging pagers, to send or deliver partisan political messages. Employees have the right to express their opinions on political subjects and candidates, both publicly and privately. The Hatch Act does not prohibit "water-cooler"-style discussions and exchanges of opinion among co-workers concerning the events of the day. The use of electronic messaging for a casual exchange of personal political opinion is not, in and of itself, a prohibited communication under the Hatch Act. OSC provides a test to determine whether a given communication falls under the Hatch Act's prohibition of political activity while on duty. OSC states in the advisory that "relevant considerations include, but are not limited to: (1) the content of the message (i.e., is its purpose to encourage the recipient to support a particular political party or vote for a particular candidate for partisan political office); (2) its audience (e.g. the number of people it was sent to, the sender's relationship to the recipients); and (3) whether the message was sent in a [government] . . . building, in a government owned vehicle or when the employee was on duty." The restrictions also apply, even if the equipment used to transmit the message is personally owned, where the transmission occurs through the government's E-mail network or in a government building or vehicle or while the employee is on duty. Examples are provided in the advisory, located on the OSC website, www.osc.gov.

Government support services to candidates:

District government personnel may not use government resources or take official actions to support or oppose a partisan or nonpartisan campaign (*see* D.C. law restrictions below), whether or not the candidate who benefits from the District government employee's services is covered by the Hatch Act. Conversely, District government personnel may carry out their official responsibilities, even if the performance of those duties has the incidental effect of benefiting a campaign. So, for example, District government employees may not use government resources or engage while on duty in preparing a campaign speech for a person running for the office of Mayor or for a Council member position, but an employee may work on public statements for a person who is a candidate if that is part of the employee's official function, such as preparing statements for a ground-breaking ceremony, a bill-signing ceremony, an extension of greetings to visiting dignitaries, and the like.

Similarly, public information officers ("PIO's") who work in support of a non-covered person in his or her official capacity may issue press releases and advise the media concerning the official activities of the non-covered person, but the PIO's may not issue releases concerning the non-covered person's campaign activities. Inquiries concerning such activities should be addressed to the non-covered

person's campaign committee or representative. In addition, government employees may not deny access to materials normally made available to the public upon request, merely because a given request originates from a political campaign organization. For example, copies of an official speech may be made available to a political campaign upon request.

Local restrictions regarding use of government resources in ballot measures generally:

District law prohibits the use of any government resources, including funds, personal services of employees, supplies, materials, equipment, office space, facilities, telephones, and other utilities, to support or oppose any partisan or nonpartisan candidate, or to support or oppose any initiative, referendum, or recall measure.

D.C. government contacts for further information:

Polly Rich, D.C. Ethics Counselor: 724-5561

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